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**JUL 03 2007**

In the UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Mirko Appel

Application No. 10/528,731

Atty Docket No: 2002P15759WOUS

Filed: March 22, 2005

Title: METHOD AND APPARATUS FOR MONITORING A TECHNICAL  
INSTALLATION, ESPECIALLY FOR CARRYING OUT DIAGNOSIS

Examiner: Edny Labbees

Art Unit: 2612

➔ **FACSIMILE ATTN TO: EDNY LABBEES**

**FAX NO.: 571-273-8300**

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patent  
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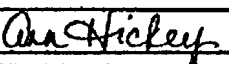
<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/528,731
	Filing Date	March 22, 2005
	First Named Inventor	Mirko Appel
	Art Unit	2612
	Examiner Name	Edny Labbees
Total Number of Pages in This Submission	Attorney Docket Number	2002P15759WOUS

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NO. 7224 P. 3/17 (12-04v2)

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Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).		Complete If Known	
<b>FEE TRANSMITTAL for FY 2005</b>		Application Number	10/528,731
		Filing Date	March 22, 2005
		First Named Inventor	Mirko Appel
		Examiner Name	Edny Labbees
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Art Unit	2612
TOTAL AMOUNT OF PAYMENT (\$)		500	2002P15759WOUS

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## FEE CALCULATION

## 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

## 2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
-20 or HP= _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
-3 or HP= _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

## 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(a).


Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____		

## 4. OTHER FEE(S)

Appeal Brief Fee Under 37 CFR 41.20(b)(2)

Fees Paid (\$)  
500.00

## SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	44,961	Telephone	407-736-6449
Name (Print/Type)	JOHN P. MUSONE	Date	JULY 3, 2007		

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PATENT

Attorney Docket No. 2002P15759WOUS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Inventor:	M. Appel et al.	)	Group Art Unit: 2612
		)	
Serial No.:	10/528,731	)	Examiner: Labbees, Edny
		)	
Filed:	03/22/2005	)	

Title: METHOD AND APPARATUS FOR MONITORING A TECHNICAL  
INSTALLATION, ESPECIALLY FOR CARRYING OUT DIAGNOSIS

MAIL STOP APPEAL BRIEF - PATENT  
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APPELLANT'S BRIEF UNDER 37 CFR 41.37

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens  
Aktiengesellschaft.

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**2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)**

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

**3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)**

Claims cancelled: 1 - 11.

Claims withdrawn but not cancelled: None.

Claims pending: 12 - 22.

Claims allowed: none.

Claims rejected: 12 - 22.

The claims on appeal are 12 - 22.

**4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)**

After the Final Rejection contained in the Office Communication mailed 12 January 2007, a Response under 37 CFR 1.116 was filed on 9 March 2007. Amendments to Claims 18 and 19 were presented in that Response and, per the Advisory Action mailed 23 April 2007, the amendments were entered for purposes of appeal.

**5. SUMMARY OF THE CLAIMED SUBJECT MATTER - 37 CFR 41.37(c)(1)(v)**

The invention relates generally to a method for monitoring a technical installation, for example, to provide a diagnosis, such as might be performed in relation to operation of turbines or generators in a power plant. See page 1, lines 10-14. According to one example, galvanic skin conditions can be used to determine the state of a maintenance worker who is observing a component such as a turbine in a plant. Even slight deviations from an operating condition of a particular component can be sensed in a worker, e.g., a change in blood pressure, pulse rate, galvanic skin reflex, breathing pattern or cardiovascular activity. At the same time, the worker may not be aware there is deviation from the operating condition or that potentially a failure may

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be in progress. Acquisition of human physiological changes may be based on involuntary reactions of the nervous system.

According to another embodiment, a drive belt may be monitored, initially based on an observation by a worker that a pump is making more noise than usual because one of three belts is slightly loose. If there is not an immediate need to tighten or change the belt, then the belt may be monitored on subsequent tours by the worker. The monitoring may be effected by measuring how long the worker observes the drive belt or by detecting a level of change in human perception while the belt is being observed. Generally, many embodiments of the invention add objectivity to human sensing by combining human sensing with objective recording to provide a plant assessment tool.

The invention defined in independent claim 12 provides a method for monitoring a technical installation (page 1, lines 27-29). According to the method, during an inspection tour of a portion of the technical installation a physiological reaction of a human being is acquired (page 2, lines 6-16; page 3, lines 17-23; page 4, lines 18-26). The reaction is analyzed (page 5, lines 1-3) to diagnose the operational condition of a component of the technical installation (page 4, lines 1-5). The reaction may be a change in human perception such as, for example, a change in the duration of time over which an observation is made. As noted above, this may be the amount of time that a worker spends observing a noisy belt.

The invention of independent claim 18 provides a method for performing a diagnosis of a technical installation (page 1, lines 27-29; page 4, lines 1-5). According to this method, a sensor device is provided (page 2, lines 14-16; page 3, lines 17-28) and, during an inspection tour around a portion of a technical installation (page 1, lines 27-29), a human physiological reaction is acquired with the device (page 1, lines 27-29; page 2, lines 9-16; page 4, lines 20-23; page 5, lines 5-14). The reaction is analyzed (page 4, lines 1-5; page 5, lines 1-3) to determine a condition of the technical installation (page 24, lines 25-26; page 5, lines 1-3, 15-16).

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**6. GROUND OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR****41.37(c)(1)(vi)**

Independent claims 12 and 18 and dependent claims 13, 16, 17, 19, 21 and 22 stand rejected under Section 103 based on Mann (WO 99/06974).

Dependent claims 14 and 20 stand rejected under Section 103 over Mann in view of Galiana (US 6, 901,334).

Dependent claim 15 stand rejected under Section 103 over Mann in view of Andersen (US 5,745,034).

**7. ARGUMENT 37 CFR 41.37(c)(1)(vii)**

**APPELLANTS TRAVERSE ALL REJECTIONS BASED ON THE MANN REFERENCE ALONE OR IN COMBINATION WITH THE GALEANI OR ANDERSEN REFERENCE.**

**7A. ALL OF THE REJECTIONS ARE IMPROPER BECAUSE THE REJECTION OF THE INDEPENDENT CLAIMS 12 AND 18 BASED ON MANN IS IN ERROR.**

The Appellant traverses all of the claim rejections under 35 USC 103 because the single reference, Mann, used to reject both of the independent claims 12 and 18, fails to disclose every feature recited in each of the claims 12 and 18.

The Mann reference was used to reject the claims because this reference discloses sensors "for detecting physiological responses ... [or to] collect real time body vital sign measurements ..." See Mann at page 3, lines 19-24. However, this reference does not at all relate to diagnosing the operational condition of a component of the technical installation. Rather, the Mann reference relates to a robbery deterrent system 100. Without establishing a basis for doing so, the Examiner insists that the robbery deterrent system 100 of Mann is the same as diagnosing an operational condition of a component in a technical installation. The rejection on its face appears to completely disregard the difference in meaning between the word *deter* and the word

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*diagnose* while Appellants believe the Examiner is obliged to give full regard to the plain language of the claims which on its face distinguishes over the prior art.

It is only in the context of the robbery deterrent system 100 that the Mann reference discloses a biosensor, e.g., for “detecting physiological responses to emotions, such as fear.” See Mann at page 3, lines 21-22. On the other hand, the scopes of independent claims 1 and 18 have never included such prior art embodiments. This is evidenced, for example, by inclusion in claim 12 of the language “analyzing the reaction to diagnose” which language cannot in any way be equated with mere “detecting physiological responses ...” The Mann reference says nothing about diagnosing and certainly nothing about diagnosing “an operational condition of a component ...”

To reject claim 12 under Section 103 the prior art must teach or suggest *every* element defined in the claim. Yet the examiner already acknowledges that the Mann reference is insufficient in this regard.

For example, the examiner notes, in rejecting claim 12, that the “system of MANN does not specifically state to diagnose the operation condition of a component of a technical installation ...” See page 3 of the Final Office Action.

The examiner also goes on to state that one of ordinary skill in the art

“would readily recognize that a vault, cash drawer or a similar objects [sic] are part of an installation such [sic] a bank or any similar establishments. In addition, one of ordinary skill in the art would also recognize that if the system recognizes that a person is under coercion from accessing a secured location or facility, an object, vault or drawer potentially being compromised [sic]. This is suggested by the Access control circuit (112), which allows access to the secured area, object or transaction.”

The Examiner’s argument is not clear or persuasive. While Appellant would disagree that a vault or cash drawer is a part of the claimed technical installation, it is more relevant to note that the prior art does not monitor the **condition** of these. So, even if the vault or cash drawer could be considered to be part of a technical installation, the Mann reference still does not “diagnose the technical condition of these components.” This distinction between the Mann reference and the claimed invention is even more apparent from an example presented at page 4 of Mann, which states in part:



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"If a robber enters a facility such as a [bank] and brandishes a gun, the tellers will be unable to access any cash because their physiological response to the threat will shut down access to the [cash] drawers."

Clearly the Mann reference does not teach or suggest monitoring the "condition" of a vault or drawer. Rather, the Mann reference only discloses a method for shutting down access to the vault or draw. In contrast, Appellants teach **diagnosing** the operational condition of components in a technical installation such as, for example, a mechanical system that operates with a drive belt. Shutting down a vault or drawer is simply not the same as diagnosing a technical condition. Diagnosis relates to analyzing and understanding a condition while "shutting down" relates to changing a state. There is simply no basis to extend a disclosure which relates to changing a state to include diagnosing, and there is no basis to extend appellant's teaching of diagnosis to include *changing* a state.

For these reasons, the Mann reference cannot support the rejection of the independent claims 12 and 18. There can be no basis for rendering claim 12 obvious when the rejection does not provide the claimed combination. There is no teaching or suggestion for the combination of claim 12. Specifically, the method of claim 12 requires:

"analyzing the reaction to diagnose operational condition of a component of the technical installation"

The Mann reference discloses **nothing** at all about "analyzing" a reaction to diagnose "an operating condition." So the claim cannot be rejected based on Mann alone.

In response to the examiner's argument, it does not matter how broadly the examiner can read claim 12, and it does not matter how broadly the examiner can read the Mann reference, the Mann reference simply does not disclose the claimed combination. It contains no suggestion of "analyzing ... to diagnose operational condition of a component" There cannot even be a hindsight piecemeal reconstruction of the claim 12 combination from the Mann reference.

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As for independent claim 18, similar deficiencies exist. Claim 18 requires "an inspection tour [performed] by the human" and also requires "analyzing to determine a condition of a portion of the technical installation." Neither of these features presented in claim 18 is suggested by the prior art. The invention of claim 18 cannot even be reconstructed in hindsight because the claimed features are not present in the prior art and, therefore, one cannot possibly recreate the claimed combination.

For all of these reasons, the rejections of the independent claims 12 and 18 based upon the Mann reference are improper and should be removed. The prior art cannot support the rejections.

**7B. PATENTABILITY OF EACH CLAIM SHOULD BE SEPARATELY CONSIDERED.**

All claims have been rejected, either solely on the Mann reference or based on a combination of the Mann reference with either Galiana '334 or Andersen '034. The foregoing general argument, based on deficiencies of the Mann reference, demonstrates patentability of all claims. However, none of the rejected claims stand or fall together. This is because each dependent claim defines a unique combination that patentably distinguishes over the art of record. Patentability of each dependent claim is separately argued and should therefore be separately considered. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number. The Board is requested to consider each argument presented with regard to each dependent claim because each of the claims further distinguishes over the prior art.

The features defined in the dependent claims further distinguish over the prior art. The Examiner's application of Galeani or Andersen to reject the dependent claims does nothing to compensate for the above-noted deficiencies of the Mann reference. However, before arguing patentability of each dependent claim, a response must be made of record regarding the Examiner's conclusion that Mann discloses all of the limitations of claim 13. Since the Examiner acknowledges at page 3 of the Final Office Action that "MANN does not specifically state to diagnose the operation condition of a component of a technical installation" and hence does not

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disclose all of the elements of claim 12, it cannot follow that the Mann reference discloses all of the claimed limitations present in claim 13 which depends from claim 12. See, again, page 3 of the Final Office Action.

**7C. EACH OF THE DEPENDENT CLAIMS FURTHER DISTINGUISHES THE INVENTION OVER THE PRIOR ART.**

Each of the claims depending from Claim 12 or Claim 18 further distinguishes over the prior art. Neither Galiana '334 or Andersen '034 nor any other art of record can compensate for the deficiencies present in the Mann reference.

**7C(1). Claim 13 is Patentably Distinct over the Mann reference.**

Claim 13, rejected over Mann, further distinguishes the invention over the art of record because it requires a physiological reaction that includes one of a neuritic current and changes in the neuritic current, and blood pressure and changes in blood pressure, pulse rate and changes in pulse rate, pulse strength and changes in pulse strength, galvanic skin reflex and changes in galvanic skin reflex, and breathing patterns. This combination is absent from the Mann reference.

**7C(2). Claim 14 is Patentably Distinct over the combination of the Mann reference and Galiana.**

Claim 14 further distinguishes over the prior art because the stated combination includes a camera device "used to record the human's sight including changes in said human's directions of sight." Because the Mann reference fails to disclose requisite subject matter relating to a diagnosis, the combination falls short of the subject matter defined in claim 14.

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**7C(3). Claim 15 is Patentably Distinct over the combination of the Mann reference and Andersen.**

Claim 15 is further distinguished because the recited combination requires that "the human is equipped with a sensor device to acquire the human's physiological reaction." The combination of Mann and Andersen fails to disclose requisite subject matter relating to a diagnosis and therefore falls short of the subject matter defined in claim 15.

**7C(4). Claim 16 is Patentably Distinct over the Mann reference.**

The method of Claim 16 further distinguishes over the prior art because the recited combination includes "storing the human's physiological reaction in a database ..." with "the database representing a history of the human's physiological reaction." Because the Mann reference fails to disclose requisite subject matter relating to a diagnosis, the Mann reference alone is insufficient to reject claim 16 under Section 103.

**7C(5). Claim 17 is Patentably Distinct over the Mann reference.**

The method of claim 17 further requires providing "an assignment of the acquired human physiological reaction at a failure, a process disturbance, and normal operation of the component in the technical installation." The claimed combination of features is absent from the examiner's combination. It is not taught or suggested by the prior art.

**7C(6). Claim 19 is Patentably Distinct over the Mann reference.**

According to the method of claim 19 the "step of acquiring the human physiological reaction includes acquiring one or more of a neuritic current and changes in the neuritic current, blood pressure and changes in blood pressure, pulse rate and changes in pulse rate, pulse strength and changes in pulse strength, galvanic skin reflex and changes in galvanic skin reflex, and

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breathing patterns. The combination of claim 19 is non-obvious. Moreover, the combination cannot be found in the Mann reference.

7C(7). Claim 20 is Patentably Distinct over the combination of the Mann and Galiana references.

The method of claim 20 further includes "using a camera device to record the human's sight and changes of said human's directions of sight." The claimed combination is not found in the cited references. The Andersen reference does not compensate for the deficiencies of the Mann reference. Claim 20 is a non-obvious combination.

7C(8). Claim 21 is Patentably Distinct over the Mann reference.

The method according to Claim 21 is a combination including providing "a database for storing the human physiological reaction with the database representing a history of the human's physiological reaction." The combination is not suggested by the prior art. Moreover, as noted for other claims, the Mann reference does not teach or suggest all of the elements of the claimed method. The Mann reference does not disclose performing a diagnosis.

7C(9). Claim 22 is Patentably Distinct over the Mann reference.

The method according to Claim 22 is a non-obvious combination wherein "the acquired human physiological reaction is assigned one of a failure, process disturbance, and normal operation of a component of the technical installation." This combination is also absent from the Mann reference. The prior art does not suggest such an assignment in combination with a diagnosis.

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**8. CLAIMS APPENDIX - 37 CFR 41.37(c) (1) (viii).**

A copy of the claims involved in this appeal is attached as a claims appendix under 37 CFR 41.37(c) (1) (viii).

**9. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)**

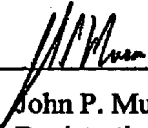
None is required under 37 CFR 41.37(c) (1) (ix).

**10. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)**

None is required under 37 CFR 41.37(c) (1) (x).

Respectfully submitted,

Dated: 7/3/07

By:   
John P. Musone  
Registration No. 44,961  
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Intellectual Property Department  
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Iselin, New Jersey 08830

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APPENDIX OF CLAIMS ON APPEAL

12. A method for monitoring a technical installation, comprising:

acquiring a physiological reaction of a human during an inspection tour of a portion of the technical installation,

analyzing the reaction to diagnose operational condition of a component of the technical installation.

13. The method according to Claim 12, wherein the said physiological reaction includes one of a neuritic current and changes in the neuritic current, and blood pressure and changes in blood pressure, pulse rate and changes in pulse rate, pulse strength and changes in pulse strength, galvanic skin reflex and changes in galvanic skin reflex, and breathing patterns.

14. The method according to Claim 12, wherein a camera device is used to record the human's sight including changes in said human's directions of sight.

15. The method according to Claim 12, wherein the human is equipped with a sensor device to acquire the human's physiological reaction.

16. The method according to Claim 12, further comprising storing the human's physiological reaction in a database and the database representing a history of the human's physiological reaction.

17. The method according to Claim 12, further comprising an assignment of the acquired human physiological reaction at a failure, a process disturbance, and normal operation of the component in the technical installation.

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18. A method for performing a diagnosis of a technical installation, comprising:  
    providing a sensor device; and  
    acquiring a physiological reaction from a human with the device during an inspection tour by the human around a portion of the technical installation, and analyzing the reaction to determine a condition of a portion of the technical installation.
19. The method according to Claim 18, wherein the step of acquiring the human physiological reaction includes acquiring one or more of a neuritic current and changes in the neuritic current, blood pressure and changes in blood pressure, pulse rate and changes in pulse rate, pulse strength and changes in pulse strength, galvanic skin reflex and changes in galvanic skin reflex, and breathing patterns.
20. The method according to Claim 18, further comprising using a camera device to record the human's sight and changes of said human's directions of sight.
21. The method according to Claim 18, further including providing a database for storing the human physiological reaction with the database representing a history of the human's physiological reaction.
22. The method according to Claim 18, wherein the acquired human physiological reaction is assigned one of a failure, process disturbance, and normal operation of a component of the technical installation.



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**EVIDENCE APPENDIX**

**None.**

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**RELATED PROCEEDINGS APPENDIX**

**None.**